

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

[REDACTED]

E2

FILE: [REDACTED] Office: BUFFALO, NY Date: **JUL 30 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Former Section 321 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1432

ON BEHALF OF APPLICANT:  
[REDACTED]

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Buffalo, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The record reflects that the applicant was born on October 10, 1958 in Poland. The applicant's mother, [REDACTED] became a U.S. citizen on October 24, 1972. The applicant seeks a certificate of citizenship as the child of a U.S. citizen mother under former section 321 of the Immigration and Nationality Act (the Act), as amended.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal with the office that issued the denial within 30 days of service of the decision. If the decision is mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the field office director issued his decision on May 12, 2008 and properly notified the applicant that he had 30 days, 33 days if the decision was mailed, to file an appeal with the office issuing the decision. The field office director specifically stated in the denial that the appeal was not to be filed directly with the AAO. The applicant, however, submitted the Form I-290B, Notice of Appeal or Motion, to the AAO.<sup>1</sup> Accordingly, the appeal did not reach the Buffalo field office until June 30, 2008, 49 days after the director's denial of the application. Therefore, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33 day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Although the applicant has submitted additional documentation on appeal including copies of a Form I-589, Application for Asylum and for Withholding of Removal, dated June 22, 2008; medical documentation related to a heart condition; documentation related to his 1967 admission to the United States; his 1969 application for a re-entry permit (Form I-131) and the subsequent re-entry permit issued to him; his mother's petition for naturalization (Form N-405); and a Form I-131 filed by his mother, this documentation does not establish new facts in relation to his claim to citizenship. Although the applicant also indicates on appeal that

---

<sup>1</sup> Even if the AAO had been the appropriate office to receive the appeal, the Form I-290B would still have been untimely filed as it did not reach the AAO until Tuesday, June 17, 2008, 36 days after the director's denial of the application.

Page 3

he was born out of wedlock to the best of his knowledge, he offers no further information or evidence to support his claim. Accordingly, the appeal does not meet the requirements of a motion to reopen or reconsider.

As the appeal was untimely filed, the appeal must be rejected.

**ORDER:** The appeal is rejected.